

CAUSE NO. _____

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
CROSS COUNTRY BANK, INC.;	§	
APPLIED CARD SYSTEMS, INC.; and	§	
ROCCO ABESSINIO, individually	§	
	§	_____ JUDICIAL DISTRICT
Defendants,	§	

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the STATE OF TEXAS, acting by and through the Attorney General of Texas, GREG ABBOTT, complains of Defendants, CROSS COUNTRY BANK, INC., APPLIED CARD SYSTEMS, INC., and ROCCO ABESSINIO, and for cause of action would respectfully show the Court the following:

**I.
DISCOVERY CONTROL PLAN**

1.1 Discovery is intended to be conducted under Level 2 pursuant to Tex. R. Civ. P. 190.3.

**II.
SUMMARY OF ACTION**

2.1 Defendant Cross Country Bank (Cross Country) is a state bank incorporated and chartered in the State of Delaware. Cross Country's primary business focus is on issuing credit cards targeting the subprime market (i.e. those consumers who have no credit or bad credit). Cross Country was founded in 1996 as an outgrowth of Defendant Applied Card Systems (ACS),

a credit card processing and servicing company. ACS performs essentially all of the administrative duties of Cross Country, including marketing Cross Country's credit cards, taking applications, approving or rejecting applications, collecting and processing payments, and collecting delinquent payments. ACS undertakes all of these duties in the name of Cross Country and usually on the letterhead of Cross Country, so consumers often have no knowledge that they are dealing with ACS rather than directly with Cross Country. Both ACS and Cross Country were founded by Rocco Abessinio who remains the Chairman, CEO, and sole shareholder of both entities.

2.2 Defendants Cross Country & ACS directly market Cross Country's credit cards to residents of the State of Texas, including residents of Travis County.

2.3 Over the last several years, Cross Country & ACS have engaged in a number of false, deceptive, and misleading acts or practices designed to take advantage of their customers. Such acts include, but are not limited to:

- ★ Misrepresenting the credit limit that consumers could expect to receive;
- ★ Charging customers for products and/or services that the customer did not authorize;
- ★ Representing that certain credit cards did not have an annual fee, when in fact such cards had a recurring monthly fee that was the equivalent of an annual fee; and
- ★ Making withdrawals from customers' bank accounts that were not authorized by the customer.

2.4 In addition, Cross Country and ACS have engaged in a number of harassing and

abusive debt collection practices. Such harassing and abusive tactics have been directed not only toward Cross Country's cardholders, but also toward persons who have no relationship with any of the Defendants and no knowledge or relationship with the cardholder Defendants are trying to contact.

III. JURISDICTION

3.1 Greg Abbott, Attorney General of Texas, through his Consumer Protection and Public Health Division, in the name of the State of Texas, brings this action under the authority granted to him by section 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act ("DTPA"), TEX. BUS. & COM. CODE § 17.47 *et seq.* (Vernon 2002 & Supp. 2004) and by the Texas Debt Collection Act ("TDCA"), TEX. FIN. CODE § 392 *et seq.* (Vernon 1998 & Supp. 2004).

IV. VENUE

4.1 Venue for this cause of action lies in Travis County, Texas, for the following reasons:

- A. Under § 15.001 of the Tex. Civ. Prac. & Rem. Code, venue is proper because a substantial part of the violations are alleged to have occurred in the county of suit; and
- B. Under § 17.47(b) of the DTPA, venue is proper because Defendants have done business in the county of suit.

V.
DEFENDANTS AND SERVICE OF PROCESS

5.1 Defendants are affiliated Delaware corporations and their founder and CEO, Rocco Abessinio. Cross Country Bank, Inc., is a Delaware corporation and a bank chartered by the State of Delaware with its home office and principal place of business at 800 Delaware Avenue, Wilmington, Delaware 19801-1322. Defendant Cross Country engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant Cross Country designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section, Room 214, 1019 Brazos, Austin, Texas 78701.

5.2 Applied Card Systems, Inc., is a Delaware corporation with its home office at 50 Applied Card Way, Glen Mills, Pennsylvania, 19342. ACS operates or operated call centers in Ashland, Kentucky; Boca Raton, Florida; Beckley, West Virginia and Huntington, West Virginia. Defendant ACS engages in business in the State of Texas but does not maintain a regular place of business in this state nor has Defendant ACS designated an agent for service of process. This suit arises out of Defendant's business in this state as more specifically described below. Pursuant to the Texas Civil Practices & Remedies Code § 17.044, Defendant can be served by certified mail, return receipt requested, directed to Defendant through the Texas Secretary of State as an agent for service of process at the following address: Citations Section,

Room 214, 1019 Brazos, Austin, Texas 78701.

5.3 Rocco Abessinio is the founder of both Cross Country and ACS and, upon information and belief, continues to maintain a 100% ownership interest in both entities. Abessinio is also the Chairman and CEO of both entities and maintains complete control over their operation. Defendant Abessinio can be served at his home 446 Addison Park Ln, Boca Raton, FL 33432

VI. PUBLIC INTEREST

6.1 Because Plaintiff STATE OF TEXAS has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe that Defendants have caused, and will continue to cause damage to residents of the State of Texas and cause adverse effects to legitimate business enterprises that conduct their trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest.

VII. DTPA NOTICE BEFORE SUIT GIVEN

7.1 The Consumer Protection and Public Health Division of the Office of the Attorney General of Texas informed the Defendants in general of the alleged unlawful conduct at least seven (7) days prior to filing suit.

VIII. TRADE AND COMMERCE

8.1 Defendants are engaged in trade and commerce as that term is defined by § 17.45(6)

of the DTPA.

IX.
ACTS OF AGENTS

- 9.1 Whenever in this Petition it is alleged that a Defendant did any act, it is meant that:
- a. Such Defendant performed or participated in the act; or
 - b. Such Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

X.
FACTUAL ALLEGATIONS

10.1 According to its website, Cross Country specializes in providing credit cards to consumers "who have had difficulties establishing good credit due to past credit problems or lack of credit history." Thus, Cross Country engages in "subprime lending," which is the extension of credit to consumers who are at significantly higher risk for default than traditional bank lending customers. Often Cross Country's customers have a low income, have a poor credit rating, or otherwise may be financially marginal. Cross Country represents that they "strive to help customers improve their credit when they have experienced financial problems or have no credit history on which to draw." Cross Country further represents that they strive to provide "superior customer service that is, in every instance, professional, courteous and attentive."

10.2 In fact, Cross Country offers their customers credit cards that charge high interest rates (usually over 20 percent), with high "origination" or processing fees, and annual membership fees, often combined with low credit limits. For example, Cross Country often advertises that consumers can receive a credit limit of up to \$2500. In reality, most consumers receive credit limits as low as \$200 to \$400. The \$100 origination fee and \$50 annual membership fee Cross Country

generally charges, along with the associated finance charges, therefore consumes half or more of the consumer's total credit limit the very moment that Cross Country opens an account for the consumer. Moreover, there is no grace period for finance charges, which start accruing on the fees and other charges immediately.

10.3 In some cases, Cross Country has advertised credit cards with no annual fee, but what Cross Country did not clearly disclose was that such cards contained a recurring monthly fee that was the functional equivalent of an annual fee.

10.4 Many consumers complain that they are unaware that they will be charged the various fees imposed by Cross Country, particularly consumers who apply over the telephone. In many cases, the first time consumers learn of these charges is when they receive their first billing statement or receive their first collection call. Unfortunately, by that time consumers have often made one or two small purchases, an act that Cross Country deems to be an acceptance of the credit card and all of its terms. Many consumers are also unaware that Cross Country will charge these fees to their accounts as soon as their applications are processed, and in some cases prior to the time the consumer has decided to accept the card by signing and activating it. As a result, even a small purchase can cause consumers to incur an over-limit fee on their first statement, usually in the amount of \$30 or more.

10.5 After an account is opened, consumers continue to incur charges and fees for most customer assistance types services they seek from Cross Country. For example, for many consumers, Cross Country does not provide a toll-free number that can be used to contact customer service. Consumers seeking assistance with their accounts, therefore, often incur significant long distance telephone charges. Consumers are also charged a fee by Cross Country for requesting and receiving

a copy of their billing statement (even if they fail to receive their monthly statement) or for accessing automated account information.

10.6 Moreover, when consumers do contact Defendants, they rarely receive the type of customer service they expected. Instead, they are often confronted with high-pressure pitches from “collectors” pressuring the consumer to make their minimum payment by allowing an automatic withdrawal to be made from their bank accounts. Consumers are led to believe that such a payment will bring their account into good standing, but Defendants often fail to disclose that there is an additional fee charged to the credit account for this type of payment. In addition, Defendants fail to disclose to consumers that interest will continue to accrue on their account balance until the day Cross Country processes the payment. As a result, many consumers do not get fully caught up on their account, and finance charges and other fees continue to accrue.

10.7 Moreover, after consumers have agreed to one automatic withdrawal from their bank account (a process referred to by Cross Country as a “pay-by-phone”) to cure their account delinquency or bring the account back into current status, Cross Country will often make additional withdrawals from their account without authorization, frequently causing consumers to incur overdraft charges on their bank accounts.

10.8 Cross Country’s unjustified over-limit fees, late fees, and service fees, as well as the finance charges on all of these fees and charges, consume more of the consumer’s already small credit limit and/or push the consumer further over their credit limit and further behind in payments. Thus, the consumer is faced with a steeply escalating debt which for the typical sub-prime credit cardholder is very difficult, if not impossible, to manage and pay off. Instead of improving their credit as Cross Country advertises, many consumers are left with worse credit because of their

relationship and experience with Cross Country.

10.9 In addition to Cross Country's standard credit card fees, consumers often discover when they receive their first bill (if that soon), that they have been charged for one or more memberships programs that they did not authorize or did not knowingly authorize. Some of the membership programs Cross Country has offered at different times include "Shopper's Advantage," "Auto Advantage," "Applied Advantage," and "Credit Account Protection." Once a consumer is initially enrolled in one of these membership programs, the membership will be automatically renewed indefinitely and the fees will be automatically charged to the consumers credit card, unless the consumer takes affirmative action to cancel the membership.

10.10 Although Defendants represent that they comply with the Federal Debt Collection Act, Defendants also engage in threatening, harassing, and deceptive debt collection practices that unreasonably invade the privacy of Texas residents. Defendants' conduct includes, but is not limited to:

- (1) Making frequent and multiple telephone calls to the same person daily, including making several calls to the same person within a few minutes;
- (2) Making such frequent and multiple telephone calls over a period of several days, weeks, or months;
- (3) Calling people multiple times a day, seven days a week, including holidays;
- (4) Calling people multiple times from early morning until late at night (after 9:00 p.m.);
- (5) Calling people at both their home and place of employment, several times a day;
- (6) Calling consumers back immediately and repeatedly after the consumer has terminated calls by hanging up;

- (7) Ignoring repeated requests from employers and businesses to stop frequent and multiple calls to their businesses;
- (8) Talking to consumers' supervisors at work when the person is not there or has not taken the calls of one of Defendants' collectors;
- (9) Disclosing personal information about a person's financial situation to co-workers, employers, neighbors, or other family members if the person does not answer the phone;
- (10) Repeatedly calling people who have no business dealings with Defendants, even after being notified of such;
- (11) Ignoring requests to remove errant telephone numbers from Defendants' database to eliminate multiple calls;
- (12) Using derogatory, abusive, threatening, and obscene language while talking to people;
- (13) Ignoring repeated verbal and written requests that Cross Country cease calling the person at work and/or at home, even when the person being called has followed the instructions provided by Cross Country;
- (14) Using an automatic dialing-announcement device to repeatedly call people multiple times a day;
- (15) Misrepresenting that the collector making the call is a friend of the consumer, or that the call is an urgent matter when it is not; and
- (16) Threatening to garnish the customer's wages to obtain payment on an account when it cannot.

10.11 Defendant Abessinio is the Chairman, CEO, and sole shareholder of Cross Country and ACS. Abessinio is actively involved in the day to day operations of Cross Country and ACS. In particular, Abessinio is directly involved in the creation of Cross Country's credit card solicitations and gave final approval on all such solicitations. Abessinio also regularly monitors customer service and collection calls and is aware of the nature and volume of complaints that have been filed against the companies. Despite being aware of Cross Country's and ACS's illegal conduct, Abessinio has prevented the companies from implementing any reforms to eliminate such conduct.

XI.

TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT VIOLATIONS

11.1 Sections 1.1 through 10.11 are incorporated herein by reference.

11.2 Defendants, as alleged above and detailed below, have in the course of trade and commerce engaged in false, misleading, or deceptive acts and practices declared unlawful in §§ 17.46(a) and (b) of the DTPA. Such acts include but are not limited to:

- A. Engaging in false, misleading or deceptive acts or practices in the conduct of trade or commerce, in violation of § 17.46(a);
- B. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of § 17.46(b)(3) of the DTPA;
- C. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have, in violation of § 17.46(b)(5) of the DTPA;
- D. Representing that an agreement confers or involves rights, remedies, or obligations

which it does not have or involve, or which are prohibited by law in violation of § 17.46(b)(12) of the DTPA;

- E. Failing to disclose information concerning goods or services which was known at the time of the transaction in order to induce a consumer into a transaction into which the consumer would not have otherwise entered, in violation of § 17.46(b)(24); and
- F. Engaging in acts or practices in violation of the TDCA which are declared to be a deceptive trade practice by § 392.404(a) of the TDCA.

XII. DEBT COLLECTION ACT VIOLATIONS

12.1 Sections 1.1 through 11.2 are incorporated herein by reference.

12.2 Defendants have engaged in unfair, harassing, abusive, and coercive debt collection practices and have employed fraudulent, deceptive, or misleading representations declared unlawful in the TDCA. Such acts include but are not limited to:

- A. Using or threatening to use violence or other criminal means to cause harm to a person or property of a person, in violation of § 392.301(a)(1) of the TDCA;
- B. Threatening that nonpayment of a consumer debt will result in the seizure, repossession, or sale of the person's property without proper court proceedings, in violation of § 392.301(a)(7) of the TDCA;
- C. Threatening to take an action prohibited by law, in violation of § 392.301(a)(8);
- D. Using profane or obscene language or language intended to abuse unreasonably the hearer, in violation of § 392.302(1) of the TDCA;
- E. Placing telephone calls without disclosing the name of the individual making the call and with the intent to annoy, harass, or threaten a person at the called number, in

violation of § 392.301(2) of the TDCA;

- F. Causing a person to incur a long distance telephone toll, telegram fee, or other charge by a medium of communication without first disclosing the name of the person making the communication, in violation of § 392.302(3) of the TDCA;
- G. Causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number, in violation of § 392.302(4) of the TDCA;
- H. Using a name other than the true business or professional name or the true personal or legal name of the debt collector while engaged in debt collection, in violation of § 392.303(a)(1);
- I. Misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt's status in a judicial or governmental proceeding, in violation of § 392.304(a)(8) of the TDCA;
- J. Using a false representation or deceptive means to collect a debt or obtain information concerning a consumer, in violation of § 392.304(a)(19).

XIII. PRAYER

13.1 Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. Unless enjoined by this Honorable Court, Defendants will continue to violate the laws of the STATE OF TEXAS and cause injury, loss, and damage to the STATE OF TEXAS and to the general public.

13.2 WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear

and answer herein; and upon notice and hearing TEMPORARY and PERMANENT INJUNCTIONS be issued, restraining and enjoining Defendants, Defendants' agents, servants, employees and attorneys and any other person in active concert or participation with any Defendant from engaging in practices declared unlawful by section 17.46 of the DTPA and Chapter 392 of the TEX. FIN. CODE within the State of Texas;

13.3 In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court will:

- a. Adjudge against Defendants civil penalties in favor of Plaintiff STATE OF TEXAS in the amount of Twenty Thousand and No/100 Dollars (\$20,000.00) for each violation of the DTPA and/or the TDCA, pursuant to § 17.47(c) of the DTPA;
- b. Make such additional orders and judgments against Defendants as are necessary to compensate identifiable persons, to restore money that may have been acquired by unlawful means, or to disgorge from Defendants any ill-gotten gains;
- c. Order Defendants to pay Plaintiff STATE OF TEXAS attorneys' fees and costs of court pursuant to the TEX. GOV'T CODE ANN. § 402.006(c) (Vernon 1998);
- e. Order that all fines, civil penalties, or forfeitures payable to and for the benefit of the Plaintiff STATE OF TEXAS are not dischargeable under bankruptcy pursuant to 11 U.S.C. § 523 (a) (7); and
- f. Grant all other relief to which the Plaintiff STATE OF TEXAS may show itself entitled.

Respectfully submitted,

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